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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 106

W. D. SANDERS, PETITIONER,

vs.

ARMOUR FERTILIZER WORKS AND NATIONAL FIRE INSURANCE COMPANY.

SUGGESTIONS CONCERNING THE QUESTION OF THE JURISDICTION OF THE DISTRICT COURT BELOW.

CHARLES J. FAULKNER, JR.,
Chicago, Illinois,
MARK MCMAHON,
Fort Worth, Texas,
Attorneys for Armour Fertilizer Works, Respondent.

CANTEY, HANGER & MCMAHON,
Fort Worth, Texas,
Of Counsel.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

SUBJECT INDEX.

Page

Suggestions concerning the question of the jurisdiction of the District Court below 1-8

I. Under the Federal Interpleader Act, the jurisdiction of the district courts depends, among other things, upon there being two or more adverse claimants claiming to be entitled to the insurance 1, 2

(A) This Act was intended to protect the insurance companies, and not to affect the rights of the adverse claimants 2, 3

(B) Armour does not assert a claim, against the insurance companies, that Armour is entitled to the insurance, but that the insurance is owing to Sanders 3

(C) The position of the insurance companies is not different from that of a custodian who holds chattels which are sought to be levied upon to satisfy a judgment against the owner 3, 4, 5

(D) Armour's Illinois garnishment action, as against the insurance companies, is in the name of Sanders, and any judgment entered against them would be in favor of Sanders. The Illinois garnishment action does not affect the relationship between the insurance companies and Sanders, nor place the insurance companies in any worse position than if they were being sued in Illinois by Sanders 5, 6

(E) Payment of any judgment entered against the insurance companies in the Illinois proceeding would fully discharge their indebtedness to Sanders. Armour, rather than being adverse to Sanders, is actually representing him in the enforcement of his rights against the insurance companies in the Illinois action 6, 7

(F) Armour does not claim to be the owner of the insurance, but that it belongs to Sanders, and, being his property, should be appropriated toward the satisfaction of its Illinois judgment against him, which judgment, under Illinois law, bound the insurance credits as security for its payment ... 7, 8

II. Quare: Are Armour and Sanders adverse claimants claiming to be entitled to the insurance in question 8

Table of Cases Cited.

Chicago, R. I. & P. R. R. Co. v. Sturm, 174 U. S. 710, 43 L. ed. 1145 4

Harris v. Balk, 198 U. S. 215, 49 L. ed. 1023 ..... 6, 7

Louisville & N. R. Co. v. Deer, 200 U. S. 176, 50 L. ed. 427 7

National Bank of America v. The Indiana Banking Co., 114 Ill. 483, 2 N. E. 401 6

National Fire Ins. Co. v. Sanders, 33 Fed. (2d) 157. 2

National Fire Ins. Co. v. Sanders, 38 Fed. (2d) 212. 2

North Chicago R. M. Co. v. St. Louis Ore & Steel Co., 152 U. S. 596, 38 L. ed. 565 5

Table of Statutes Cited.

Illinois Attachment Act, Sec. 35 7

Illinois Garnishment Act, Sec. 1 6

Illinois Garnishment Act, Sec. 16 7

28 U. S. C. A. 41 (26) 1, 8

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We respectfully suggest for the consideration of this Honorable Court the question, whether or not the District Court in Texas had jurisdiction to enjoin the prosecution of Armour's garnishment suit in Illinois, or jurisdiction to hear and determine the merits of the present controversy, in view of the requirement of the Federal Interpleader Act that there must be "two or more *adverse* claimants * * * claiming to be entitled * * * to such insurance." 28 U. S. C. A. 41 (26), as amended May 8, 1926. This Act provides that the district courts shall have original jurisdiction in these cases, where the

insurance company, by verified bill, avers—and of course proves—this jurisdictional fact among others.

We have raised this jurisdictional question on every occasion in the courts below. At the first trial in the District Court, the late District Judge Estes held that the District Court did not have jurisdiction, it being his opinion that Armour and Sanders were not adverse claimants. See *National Fire Insurance Co.* v. *Sanders*, 33 Fed. (2d) 157. Upon the first appeal of this case, the Circuit Court of Appeals held that Armour and Sanders were adverse claimants and that the District Court did have jurisdiction under the statute. See *National Fire Insurance Co.* v. *Sanders*, 38 Fed. (2d) 212. This Circuit Court of Appeals decision was followed as the law of the case by the District Court at the second trial and by the Circuit Court of Appeals in the decision now before this Honorable Court for review. (R. 223)

We are suggesting this jurisdictional question to this Honorable Court at this late date, because Sanders has filed no brief as required by Rule 27, to which we could file a reply brief raising this point. It did not seem to us that this point was pertinent to the question of whether or not this Honorable Court should grant Sanders' petition for writ of certiorari, and for that reason we did not raise the point in our brief in opposition to Sanders' petition. We realize that this Honorable Court may wish to decide this case without the filing of briefs under Rule 27, and we feel that this jurisdictional question should be suggested for consideration.

It seems clear that this Federal Interpleader Act was intended to protect the insurance companies, and was not intended to affect the rights and equities as between the several adverse claimants. Thus viewing the matter

from the position of the insurance companies in the instant case, were Armour and Sanders adverse claimants who were claiming to be entitled to this insurance?

We have never contended that this insurance, or even the proceeds thereof, belongs to Armour. We have never contended that the money on deposit with the District Court below belongs to Armour. We have contended, and do contend, that Armour has an equitable lien upon the insurance credits and upon the deposited money which represents such credits, which lien we maintain is superior to Sanders' homestead exemption claim. It is true that the enforcement of Armour's lien will exhaust the insurance money, but this is so only because of the extent of Armour's lien; Armour's Illinois judgment against Sanders is for more than the amount of the insurance. This does not alter the fact that Armour is merely seeking to enforce a lien. The nature of Armour's claim is exactly the same as in a case where the enforcement of the lien will exhaust only a part of the fund.

One does not ask for the enforcement of a lien upon what one claims to own. Armour is not saying to the insurance companies, "You owe this insurance to us." On the contrary, Armour says that the insurance companies owe the insurance to Sanders. And, if this fact were not admitted by the insurance companies, Armour would have to prove this fact before it could enforce its lien.

We believe the situation here is not different from a case wherein a judgment creditor seeks to enforce a judgment lien upon chattels in the hands of a custodian, by levy and sale upon execution. Whether the custodian is sued by the owner, or the chattels are sold to pay the judgment, the custodian is held answerable

only to one claimant—the owner of the chattels. He is not faced by two claimants. But even if the judgment creditor be regarded as a second claimant, he is merely claiming the right to enforce his lien; he does not dispute his judgment debtor's ownership of the chattels, nor does he claim that the custodian is accountable to him and not to his judgment debtor. On the contrary he only asks that the law be permitted to take its course in the matter of enforcing his lien upon the judgment debtor's property. The custodian is not in the position of having to contend with two "adverse claimants". And, the fact that the owner may claim that the chattels are exempt from execution, does not make him and his judgment creditor adverse claimants against the custodian; nor present any reason for interpleader.

In the instant case we believe the insurance companies were in exactly the same position as the custodian we have been discussing. They were confronted with no greater hazard than that of defending against one claim and one claimant—Sanders' claim against them upon the insurance contracts.

In *Chicago, R. I. & P. R. R. Co.* v. *Sturm*, 174 U. S. 710, 43 L. ed. 1145, this Honorable Court commented upon the nature of garnishment proceedings, as follows:

> "A debt may be as valuable as tangible things. It is not capable of manual seizure, as they are, but no more than they can it be appropriated by attachment without process and the power to execute the process. A notice to the debtor must be given, and can only be given and enforced where he is * * * Of course, *the debt is the property of the creditor, and because it is, the law seeks to subject it, as it does other property,* to the payment of *his* creditors. If it can be done in any other way than by process against and jurisdiction

of his debtor, that way does not occur to us." (First italics ours.)

In *North Chicago Rolling Mill Co.* v. *St. Louis Ore & Steel Co.*, 152 U. S. 596, 38 L. ed. 565, this Honorable Court gave full consideration to the nature and effect of garnishment proceedings under the Illinois law. We quote several pertinent passages from the opinion in that case. Speaking for this Honorable Court, *Mr. Justice* Jackson, said:

> "This garnishment proceeding was, under the Illinois statutes, in the name of the St. Louis Company (the garnishee's creditor), and judgment was rendered in its favor against the Chicago Company (the garnishee) for the amount of the verdict for the use of the Joliet Company (the attaching creditor) and others entitled to share therein'" (Parentheses ours.)

Continuing, *Mr. Justice* Jackson said:

> "The service of garnishment neither changed nor interrupted the contractual relations existing between the Chicago Company (garnishee) and the St. Louis Company (garnishee's creditor). The rights and equities existing, and to arise out of those contractual relations, were in no way terminated or defeated by that service. The legal operation and effect of the garnishment proceedings and of the final order therein made was only to impound what was legally and equitably due from the garnishee after the adjustment of the claims between the latter and the principal debtor, and place it beyond the control of the debtor and subject to collection for the benefit of the attaching creditor." (Parentheses ours.)

Mr. Justice Jackson further said:

> "The Illinois statutes in relation to garnishment are substantially the same as the generality of statutes on the subject, and contain no provision sustaining the proposition that either the service of the writ or the order made in the proceedings operates to transfer the debt, but only binds it and prevents the principal debtor from receiving it."

In concluding his observations upon the nature and effect of garnishment actions in Illinois, *Mr. Justice* Jackson said:

> "The proposition here laid down is in harmony with the generally recognized principle that the rights of the garnisher do not arise above or extend beyond those of his debtor; that the garnishee shall not by operation of the proceedings against him, be placed in any worse condition than he would have been in had the principal debtor's claim been enforced against him directly; that the liability, legal and equitable, of the garnishee to the principal debtor is a measure of his liability to the attaching creditor, who takes the shoes of the principal debtor and can assert only the rights of the latter. *Towner* v. *George*, 53 Ill. 168; *Richardson* v. *Wilson* (Iowa) May 12, 1892; *Huntington* v. *Risdon*, 43 Iowa, 518."

In *National Bank of America* v. *The Indiana Banking Co.*, 114 Ill. 483, 2 N. E. 401, the Illinois Supreme Court said:

> "It has been uniformly held, since the decision in *Stahl* v. *Webster*, 11 Ill. 511, that by the practice which obtains in this state, the judgment against the garnishee must be rendered in favor of the attachment or judgment *debtor* * * * for in all actions at law the suit must be in the name of the party in whom is the legal interest of the subject matter." (Italics ours.)

Section 1 of the Illinois Garnishment Act provides that,

> "If the garnishee is indebted to or has any effects or estate of a part only of such defendants, the judgment shall be against the garnishee in favor of such part of the *defendants* for the use of the plaintiff." (Italics ours.)

This Honorable Court has consistently held that, where a garnishee pays the judgment entered against him, his obligation to his creditor is as fully discharged, and to the same extent, as if his creditor had recovered and collected the judgment. See *Harris* v. *Balk*, 198 U. S.

215, 49 L. ed. 1023; *Louisville & N. R. Co.* v. *Deer*, 200 U. S. 176, 50 L. ed. 427. The reason for this is that the attaching creditor, rather than being adverse to the garnishee's creditor, is actually representing the garnishee's creditor in the enforcement of the latter's rights against the garnishee. Said this Honorable Court in *Harris* v. *Balk, supra:*

> "The plaintiff in such proceeding in the foreign state is able to sue out the attachment and attach the debt due from the garnishee to his (the garnishee's) creditor, because of the fact that the plaintiff is really, in such proceeding, a representative of the creditor of the garnishee, and therefore if such creditor himself had the right to commence suit to recover the debt in the foreign state, his representative has the same right, as representing him, and may garnish or attach the debt, provided the municipal law of the state where the attachment was sued out permits it."

Section 16 of the Illinois Garnishment Act provides:

> "The judgment against a garnishee shall acquit him from all demands by the defendant for all goods, effects and credits paid, delivered or accounted for by the garnishee by force of such judgment."

By section 35 of the Illinois Attachment Act (R. 145) it is provided that Armour's Illinois judgment against Sanders "shall bind, and a special execution shall issue against, the * * * credits attached." By all of the authorities, that judgment was a final and conclusive adjudication of Armour's right to have the insurance credits applied on its judgment, but it did not make Armour the owner of those credits. Armour's right thus acquired may be aptly termed an "equitable lien."

Viewed from the position of the insurance companies: Armour's Illinois garnishment was in the name of Sanders against the insurance companes, and any judg-

ment against the latter would be in favor of Sanders; the Illinois garnishment did not disturb the rights and equities existing between Sanders and the insurance companies under the insurance contracts between them and him; the garnishment did not place the insurance companies in any worse position than if they were being sued by Sanders in the Illinois proceeding; and payment of any judgment rendered against them in the Illinois action would discharge them just as fully and completely as the payment of any other judgment rendered against them in favor of Sanders.

In view of the facts and the law which we have reviewed herein, we believe that this Honorable Court will wish to dispose of this jurisdictional question before considering the merits of this controversy. Does the Federal Interpleader Act confer jurisdiction upon the district courts in cases of this kind, where the insurance companies are in the position of being required to defend against only one claim and one claimant—the claim of their insured upon their insurance contracts with him? Are Armour and Sanders "adverse claimants * * * claiming to be entitled * * * to such insurance", within the meaning of 28 U. S. C. A. 41 (26), as amended May 8, 1926?

Respectfully submitted,

CHARLES J. FAULKNER, JR.,
Chicago, Illinois,
MARK MCMAHON,
Fort Worth, Texas,
Attorneys for Armour Fertilizer Works, Respondent.

CANTEY, HANGAR & MCMAHON,
Fort Worth, Texas,
Of Counsel.